



**Supreme Court of Newfoundland and Labrador  
General Division**

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**\*\*\*\*Completed by the Court**

**COURT FILE#:** 2018 OIG 3114  
**HEARING DATE:** September 15, 2020  
**TIME OF HEARING:** 10:00am

**\*\*\*\*To be Completed by the Participant**

**NAME:**

**REPRESENTING PARTY:**

**CONTACT PHONE NUMBER  
FOR THE APPEARANCE:**

**E-MAIL ADDRESS:**

**2018 01G 3114**  
**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR**  
**GENERAL DIVISION**

**IN THE MATTER OF** an application by Canadian Imperial Bank of Commerce for an order appointing BDO Canada Limited as Receiver of PTL Holdings Limited, PTL Services (Equipment) Limited, CSL Services (Industrial) Ltd. and 9263357 Canada Inc.

**AND IN THE MATTER OF** the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

<b>BETWEEN:</b>	<b>CANADIAN IMPERIAL BANK OF COMMERCE</b>	<b>APPLICANT</b>
<b>AND:</b>	<b>PTL HOLDINGS LIMITED</b>	<b>FIRST RESPONDENT</b>
<b>AND:</b>	<b>PTL SERVICES (EQUIPMENT) LIMITED</b>	<b>SECOND RESPONDENT</b>
<b>AND:</b>	<b>CSL SERVICES (INDUSTRIAL) LIMITED</b>	<b>THIRD RESPONDENT</b>
<b>AND:</b>	<b>9263357 CANADA INC.</b>	<b>FOURTH RESPONDENT</b>

**NOTICE OF MOTION**

BDO Canada Limited, in its capacity as Receiver of PTL Holdings Limited, PTL Services (Equipment) Limited, CSL Services (Industrial) Limited and 9263357 Canada Inc. (collectively the **"PTL Group"**) will make a motion before the presiding Judge in Bankruptcy and Insolvency on \_\_\_\_\_, the 15 day of September 2020, at 10 am or so soon thereafter as the motion can be heard at the Courthouse, Duckworth Street, St. John's, Newfoundland and Labrador.

The motion is for the following relief:

1. An order authorizing and directing BDO Canada Limited ("**BDO**"), in its capacity as receiver (the "**Receiver**") of all the assets, undertaking and property of the PTL Group, pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**"):
  - a) To complete a final distribution from the sale, or otherwise, by the Receiver of certain assets of the PTL Group in a manner consistent with the Receivers Schedule of Proposed Distribution attached to this Notice of Motion as **Schedule A**;
  - b) Approving the Receiver's Third Report (the "**Third Report**") filed herein and the activities of the Receiver set out therein;
  - c) Approving the Receiver's Statement of Receipts and Disbursements for the period of May 11, 2018 to June 30, 2020, as set out in the Third Report;
  - d) Discharging BDO as Receiver and releasing BDO from any and all liability in connection with the receivership proceedings (save and except for any gross negligence or willful misconduct on the Receiver's part), such discharge and release to be effective upon the Receiver filing with the Court a Receiver's Certificate of Discharge (the "**Discharge Certificate**") evidencing that the Receiver has completed the Outstanding Matter (as defined in the Third Report);
  - e) Approving the fees and disbursements of the Receiver and its legal counsels, Cox & Palmer ("**C&P**") and Patterson Law LLP ("**Patterson**"), as set out in the Third Report; and
  - f) Such other relief as the Court deems appropriate.

The grounds for the motion are:

**I. Background of Receivership Proceedings**

2. By a Receivership Order of this Court dated 11 May 2018 (the "**Receivership Order**"), BDO was appointed as receiver of all the assets, undertaking and property of the PTL Group acquired for, or used in relation to, the business carried on by the PTL Group (collectively, the "**Property**") pursuant to section 243 of the BIA.

**II. Sale of the Property**

4. By an Approval and Vesting Order of this Court dated 23 August 2018 (the "**Approval and Vesting Order**"), the Receiver was authorized to complete the transaction between the Receiver and Locke's Electrical Limited (the "**Purchaser**") contemplated by the Purchase Agreement between the Receiver and the Purchaser referred to in the Approval and Vesting Order (the "**Sale Transaction**"). The Sale Transaction contemplated the purchase by the Purchaser for certain of the assets of the PTL Group for a total purchase price of **\$4,100,000.00**.

**III. Interim Distributions**

5. As outlined in the Second Receiver's Report, previously filed with this Honourable Court, the Sale Transaction was completed on September 10, 2018. In addition, in the Second Receiver's Report, the Receiver outlined the priorities of certain secured creditors and an interim proposed distribution to the Unions in respect of the Pension Charge pursuant to Section 81.6 of the BIA, the Union Dues Claim, pursuant to section 81.4 of the BIA and an interim distribution to CIBC. This Honourable Court issued an interim distribution order dated December 4, 2018 approving, among other things, the Proposed Distributions (the "**Interim Distribution Order**"), a copy of which is attached to the Third Receiver's Report filed herein.

#### IV. The CIBC Claim

6. Canadian Imperial Bank of Commerce (“CIBC”) has a valid and enforceable first priority security interest in all of the Personal Property and assets of the PTL Group, subject to the following:

(a) Charges as set out in the Receivership Order, including but not limited to, for the fees and disbursements of the Receiver and counsel to the Receiver; and

(b) PTL Group Source Deductions Priority Claim (as defined in the Third Receiver’s Report) which are being pursued by CRA and disputed by the Receiver;

#### V. The Proposed Distribution

7. Based on the funds on hand in the Receiver’s accounts, net of a reserve to fund the estimated costs to completion of the estate and the potential PTL Source Deduction Priority Claim and holdbacks (as defined in the Third Report), the Receiver proposes to make the following distributions (collectively, the “Proposed Distribution”):

(a) an interim distribution of \$1,830,000.00 to CIBC, net of the holdbacks outlined herein (the “Proposed Interim Distribution”); and

(b) Upon completion of the Outstanding Matters (as defined in the Third Report), a final distribution to CIBC, limited to the maximum extent of the CIBC indebtedness plus costs and interest, for the net balance of funds in the Receiver’s accounts after consideration of all costs associated with the completion of operations and all remaining administrative and Outstanding Matters, fees, etc. (the “Proposed Final Distribution”)

8. The Receiver also requests approval of the payment of the Receivers fees and disbursements from the date of the Receivers last report and Interim Distribution Order to the date hereof, along with a holdback for Receivers fees and disbursements in an amount estimated for completion of all Outstanding Matters (the "**Fee Approval**").
- 9: The Receiver expects CIBC will incur a shortfall, however, if there are any recoveries in excess of the CIBC outstanding indebtedness, the Receiver will distribute the excess to the Parsons Vendors and CSL Vendors, as outlined in the Third Report and subject to an independent review of their security by the Receiver's Counsel.
10. The Proposed Interim Distribution holds back sufficient estimated funds to allow the Receiver to satisfy any outstanding estate costs incurred, the potential PTL Group Source Deductions Priority Claim, projected professional fees to complete the administration of the receivership estate.
11. The priority security interest of CIBC continues in the proceeds.
12. The Proposed Distribution is further detailed in Schedule A attached to this Notice of Motion and sets out the Receiver's position and proposal on the distribution of the proceeds. The Proposed Distribution reflects the recommendations of the Receiver with respect to an appropriate holdback amount and the relative priorities.
13. A Final Distribution of proceeds is appropriate at this time as the Receiver has effectively completed the administration of the receivership estate except for the Outstanding Matters.
14. The Receiver supports the Proposed Distribution.
15. Such further and other grounds as counsel may advise.

The following documentary evidence will be used at the hearing of the motion:

1. The Receiver's Interim Statement of Receipts and Disbursements;
2. The Third Report of the Receiver; and
3. Such further and other material as counsel may advise and this Court may permit.

Dated the 24 of August, 2020



Cox & Palmer  
Solicitors for the Receiver  
Suite 1100, Scotia Centre  
235 Water Street  
St. John's, NL A1C 1B6  
**Attention: Darren D. O'Keefe**  
**Phone: 709.570.5509**  
**Email: dokeefe@coxandpalmer.com**

**ISSUED** at St. John's, Newfoundland and Labrador, this 27<sup>th</sup> day of August, 2020

Sgt. Maileene Kenney  
**COURT OFFICER**

**SCHEDULE A  
TO THE NOTICE OF MOTION**



**PTL Holdings Limited, PTL Services (Equipment) Limited,  
CSL Services (Industrial) Limited, and 9263357 Canada Inc.**

**Receiver's Schedule of Proposed Distribution**

Total Funds on Hand Per R&D	A	\$	1,922,579
Less:			
CRA Holdback Source Deductions (1)			(29,552)
Professional Fees (2)			<u>(62,950)</u>
	B	\$	<u>(92,502)</u>
Net Estimated funds available for Distribution to CIBC	A-B	\$	1,830,077
Proposed CIBC Interim Distribution		<u>\$</u>	<u>1,830,000</u>

**Notes:**

(1) Based on Company records there are no CRA deemed trust amounts for outstanding source deductions as at the Appointment Date. However, CRA has filed claims totaling \$29,552.42 which the Receiver is disputing. For purposes of this analysis, the Receiver is proposing to retain a holdback for the CRA Source Deductions claim amount until the matter is resolved.

(2) Outstanding and Estimated Professional fees associated with completion of the outstanding matters.

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**DISTRIBUTION AND DISCHARGE ORDER**

**UPON** reading the Notice of Motion of BDO Canada Limited (“**BDO**”) seeking a distribution by BDO, in its capacity as receiver (the “**Receiver**”), of the assets, undertaking and property of PTL Holdings Limited, PTL Services (Equipment) Limited, CSL Services (Industrial) Limited and 9263357 Canada Inc. (collectively, the “**PTL Group**”) **AND UPON** hearing the submissions of counsel, **AND UPON** reading the material as filed by counsel, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. The time for service of the Notice of Motion is hereby abridged and validated, and all service of the Notice of Motion is hereby validated, so that this motion is properly returnable today and further service of the Notice of Motion is hereby dispensed with.
2. The Receiver's Statement of Receipts and Disbursements, as set out in the Third Report, are hereby approved.
3. The Third Report and the activities of the Receiver set out therein are hereby approved.
4. The Receiver is hereby authorized and directed to distribute certain proceeds currently held by the Receiver from the sale, or otherwise, of property of the PTL Group as follows (the "Proposed Distribution"):
  - (a) an interim distribution of \$1,830,000.00 to CIBC net of the holdbacks outlined herein (the "Proposed Interim Distribution"); and
  - (b) Upon completion of the Outstanding Matters (as defined in the Third Report), a final distribution to CIBC, limited to the maximum extent of the CIBC indebtedness plus costs and interest, for the net balance of funds in the Receiver's accounts after consideration of all costs associated with the completion of operations and all remaining administrative and Outstanding Matters, fees, etc. (the "Proposed Final Distribution")
5. The Court hereby approves the payment of the Receivers fees and disbursements from the date of the Receivers last report and Interim Distribution Order to the date hereof, along with a holdback for Receivers fees and disbursements in an amount estimated for completion of all Outstanding Matters (the "Fee Approval").
6. Upon filing the Discharge Certificate evidencing that the Outstanding Matters have been completed, BDO will be hereby discharged as Receiver, provided however that

notwithstanding its discharge (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership proceedings, and (b) the Receiver will continue to have the benefit of the provisions of all orders made in this receivership proceeding, including all approvals, protections and stays of proceedings in favour of BDO in its capacity as Receiver.

7. Upon the Receiver filing the Discharge Certificate, BDO is hereby released and discharged from any and all liability that BDO has now or may have in the future by reason of, or in any way arising out of, the acts or omissions of BDO while acting in its capacity as Receiver, save and except for any gross negligence or willful misconduct on the Receiver's part. Without limiting the generality of the foregoing, BDO is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in this receivership proceeding, save and except for any gross negligence or willful misconduct on the Receiver's part.

**DATED** the            day of                                , 2020 at St. John's, Newfoundland and Labrador.

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**AFFIDAVIT**

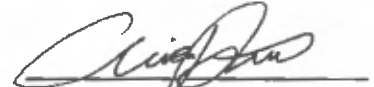
I, Allison Philpott, of the City of St. John's, in the Province of Newfoundland and Labrador, Barrister and Solicitor, make oath and say as follows:

1. That I am an associate in the law firm Cox & Palmer, solicitors for BDO Canada Limited ("BDO") and file this affidavit to ground the subject Motion.
2. That I have reviewed the within Motion and do verily believe that the facts set forth in the Motion are true.

3. That I make this Affidavit in support of BDO's motion.

**SWORN TO** at St. John's, in the Province of Newfoundland and Labrador, this 24 day of August, 2020 before me:

  
A Sanister, *al*

  
Allison J. Philpott